

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JULIE A. SU<sup>1</sup>, Acting Secretary  
of Labor, United States  
Department of Labor,

Plaintiff,

v.

SL ONE GLOBAL, INC., dba VIVA  
SUPERMARKET, a California  
corporation; SMF GLOBAL, INC.  
dba VIVA SUPERMARKET, a  
California corporation, NARI  
TRADING, INC., dba VIVA  
SUPERMARKET; UNI FOODS, INC.,  
dba VIVA SUPERMARKET, a  
California corporation; SEAN  
LOLOEE, an individual, and as  
owner and managing agent of the  
Corporate Defendants; and KARLA  
MONTOKA, an individual, and  
managing agent of the Corporate  
Defendants,

Defendants.

No. 2:22-cv-00583 WBS AC

MEMORANDUM AND ORDER RE:  
COUNTER-DEFENDANT UNITED  
STATES DEPARTMENT OF  
LABOR'S MOTION TO  
DISMISS

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d),  
Acting Secretary of Labor Julie A. Su has been substituted for  
former Secretary of Labor Martin J. Walsh.

SEAN LOLOEE; SL ONE GLOBAL,  
INC. dba VIVA SUPERMARKET; SMF  
GLOBAL, INC. dba VIVA  
SUPERMARKET; NARI TRADING, INC.  
dba VIVA SUPERMARKET; and UNI  
FOODS, INC.,

Counter-Claimants,

v.

UNITED STATES DEPARTMENT OF  
LABOR; and VERONICA VILLAMOR,

Counter-Defendants.

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Plaintiff Julie A. Su, in her capacity as Acting Secretary of the United States Department of Labor, brings this action against defendants SL One Global, SMF Global, Nari Trading, and Uni Foods, all of which allegedly do business as Viva Supermarket (the "corporate defendants"); Sean Loloe; and Karla Montoya, alleging various ongoing violations of federal labor laws at grocery stores operated by defendants. (Second Am. Compl. (Docket No. 46).)

Sean Loloe and the corporate defendants brought two counterclaims against the United States Department of Labor and Veronica Villamor. The first counterclaim is brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging that Villamor and other Department of Labor employees engaged in a politically-motivated investigation of Loloe that involved unwarranted searches and seizures in violation of Loloe's Fourth Amendment rights. The second counterclaim is brought under the Freedom of Information

1 Act ("FOIA"), 5 U.S.C. § 552, alleging that the Department of  
2 Labor failed to produce documents responsive to counterclaimants'  
3 FOIA request. (Docket No. 48.) Counter-defendant United States  
4 Department of Labor now moves to dismiss both counterclaims, or  
5 in the alternative moves for summary judgment on the FOIA  
6 counterclaim. (Docket No. 51.)<sup>2</sup>

7 Federal Rule of Civil Procedure 12(b)(6) allows for  
8 dismissal when a complaint or counterclaim fails to state a claim  
9 upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6);  
10 Levitt v. Yelp! Inc., 765 F.3d 1123, 1135 (9th Cir. 2014). The  
11 inquiry before the court is whether, accepting the allegations in  
12 the counterclaim as true and drawing all reasonable inferences in  
13 the plaintiff's favor, the counterclaim has stated "a claim to  
14 relief that is plausible on its face." See Bell Atl. Corp. v.  
15 Twombly, 550 U.S. 544, 570 (2007); Levitt, 765 F.3d at 1135.

16 Loloe and the corporate defendants bring their  
17 counterclaims against new parties, namely the United States  
18 Department of Labor and Veronica Villamor, rather than plaintiff  
19 Julie Su.<sup>3</sup> This is procedurally improper, as a counterclaim

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20 <sup>2</sup> The court does not recite a full background of the case  
21 as it has done so in a prior order. (See Docket No. 17.)

22 <sup>3</sup> Loloe and the corporate defendants argue that Acting  
23 Secretary of Labor Julie Su is "not distinguishable" from the  
24 Department of Labor. (See Opp'n at 7.) While they are correct  
25 in a practical sense -- this action is being litigated using the  
26 resources and personnel of the Department of Labor -- there are  
numerous contexts in which it is necessary to make the  
formalistic distinction between an agency head and the agency  
itself for pleading purposes.

As relevant here, it is necessary to distinguish  
between the Secretary of Labor and the Department of Labor in the  
context of a FOIA claim, which must be brought against a federal  
agency, not against federal officials. See Drake v. Obama, 664

1 cannot be asserted solely against new parties, but rather must  
2 also be asserted against an existing opposing party. See Fed. R.  
3 Civ. P. 13; Championship Prop. LLC v. Coan, No. 20-13728, 2022 WL  
4 4455208, at \*5 (11th Cir. Sept. 26, 2022) (citing Bowling v. U.S.  
5 Bank Nat'l Ass'n, 963 F.3d 1030, 1032 (11th Cir. 2020))  
6 (explaining that where defendants brought purported  
7 "counterclaims" against new parties only and not against the  
8 original plaintiff, "the 'counterclaims' weren't really  
9 counterclaims at all"); Luma Pictures, Inc. v. Betuel, No. 16-cv-  
10 2625 GW PLA, 2016 WL 11519331, at \*6 n.4 (C.D. Cal. Sept. 29,  
11 2016) (citing William W. Schwarzer et al., Cal. Prac. Guide: Fed.  
12 Civ. Proc. Before Trial § 8:1217 (2012)) ("at least one of the  
13 parties" the counterclaim is asserted against "must be an  
14 opposing party"); Hawkins v. Berkeley Unified Sch. Dist., 250  
15 F.R.D. 459, 462 (N.D. Cal. 2008) (quoting 6 Charles A. Wright et  
16 al., Fed. Prac. & Proc. Civ. § 1435, at 270-71 (2d ed. 1990)) ("A  
17 Rule 13(h) 'counterclaim or cross-claim may not be directed  
18 solely against persons who are not already parties to the  
19 original action but must involve at least one existing party.'")  
20 This defect is fatal to both the FOIA and Bivens counterclaims.

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21 F.3d 774, 785-86 (9th Cir. 2011) (affirming dismissal of FOIA  
22 claims because defendants were "individuals, not agencies"); see  
23 also Batton v. Evers, 598 F.3d 169, 173 n.1 (5th Cir. 2010)  
24 (cited with approval in Drake, 664 F.3d at 786) ("A FOIA  
25 plaintiff may not assert a claim against an individual federal  
26 official; the proper defendant is the agency."); Martinez v.  
27 Bureau of Prisons, 444 F.3d 620, 624 (D.C. Cir. 2006) (cited with  
28 approval in Drake, 664 F.3d at 786) ("[T]he district court  
properly dismissed the named individual defendants because no  
cause of action exists that would entitle appellant to relief  
from them under . . . FOIA," which "concern[s] the obligations of  
agencies as distinct from individual employees in those  
agencies").

1 See Hawkins, 250 F.R.D. at 463.

2 IT IS THEREFORE ORDERED that counter-defendant  
3 Department of Labor's motion to dismiss (Docket No. 51) be, and  
4 hereby is, GRANTED as to both counterclaims.<sup>4</sup>

5 Dated: April 4, 2023



6 **WILLIAM B. SHUBB**

7 **UNITED STATES DISTRICT JUDGE**

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27 <sup>4</sup> Because the court grants the Department of Labor's  
28 motion to dismiss the counterclaims, it need not address its  
alternative motion for summary judgment on those counterclaims.